

STATE OF MICHIGAN
COURT OF APPEALS

RICARDO RAMIREZ and ALBA RAMIREZ,

Plaintiffs-Appellees,

v

SAM BAKI, d/b/a BAKI'S UNIQUE HOME
BUILDERS AND DEVELOPMENT,

Defendant-Appellant.

UNPUBLISHED

June 4, 2002

No. 230257

Wayne Circuit Court

LC No. 99-910752-CH

Before: Fitzgerald, P.J., and Holbrook, Jr., and Doctoroff, JJ.

PER CURIAM.

Defendant appeals as of right from an order granting plaintiffs' motion to enforce a settlement agreement. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

This action arises out of the parties' contract for the construction and purchase of a home. Alleging that defendant failed to build the residence as specified in the contract, plaintiffs sought specific performance, including conveyance of the property to them, and money damages. Despite the pending action and a recorded lis pendens, a third party subsequently bought the home. Plaintiffs filed a motion to add as parties the buyers of the home and the title insurance company that apparently failed to find the lis pendens, but the parties reached a settlement before the court decided that motion.

As placed on the record, they agreed that defendant would pay plaintiffs \$80,000 within thirty days and plaintiffs would release any and all claims against defendant. Defendant's attorney prepared a document that released any and all claims against "Sam Baki, Baki's Unique Home Builders & Development, all their employees, stockholders, directors, officers, agents, representatives, and assigns." Plaintiffs signed the release, but struck out defendant's "assigns" as parties to the release. When defendant failed to pay the agreed upon \$80,000, plaintiffs brought their motion to enforce the settlement agreement. The trial court granted the motion, ordering defendant to pay plaintiffs \$80,000 and accept a release excluding defendant's assigns as listed parties.

On appeal, defendant contends that the agreement placed on the record differed from the one imposed by the trial court's order and that if the release as drawn was not the agreement of plaintiffs, then there was no meeting of the minds and the settlement should have been set aside.

A decision whether to enforce a settlement agreement is reviewed for an abuse of discretion. See *Groulx v Carlson*, 176 Mich App 484, 493; 440 NW2d 644 (1989). We find no abuse of discretion on this record.

Settlements of pending controversies are favored by the courts. *Groulx, supra* at 489. A settlement agreement is binding when it is made in open court. MCR 2.507(H). An agreement to settle a pending lawsuit is a contract and is to be governed by legal principles applicable to the construction and interpretation of contracts. *Michigan Mut Ins Co v Indiana Ins Co*, 247 Mich App 480; 498 NW2d 205 (2001). There must be a meeting of the minds on all the material facts in order to form a valid settlement agreement. *Siegel v Spinney*, 141 Mich App 346, 350; 367 NW2d 860 (1985). Settlements should not be upset because of any hesitation or secret reservation on the part of either party. *Meyer v Rosenbaum*, 71 Mich App 388, 393; 248 NW2d 558 (1976). Under usual contract principles, a party is bound by the settlement agreement absent a showing of mistake, fraud, or unconscionable advantage. *Plamondon v Plamondon*, 230 Mich App 54, 56; 583 NW2d 245 (1998).

We conclude that the trial court properly ordered enforcement of the settlement agreement without reference to defendant's assigns. The parties' settlement agreement was placed on the record in open court and it specifically provided that plaintiffs would "release the Defendant builder of any and all claims." It made no mention of a release of claims against the persons who bought the home, although there was some discussion about a possible suit against the title insurance company that neglected to discover the lis pendens.

While it is possible that defendant contemplated incorporating the buyers into the agreement, "the time to do so was in court when the agreement was placed on the record, not days or weeks thereafter." *Mikonczyk v Detroit Newspapers, Inc*, 238 Mich App 347, 350; 605 NW2d 360 (1999). If defendant was genuinely concerned that the buyers would turn to it for recovery in the event that plaintiffs successfully sued the buyers for possession of the house, defendant should have included a provision protecting it against that eventuality at the time the settlement agreement was placed on the record. In the absence of such a provision, however, the trial court did not abuse its discretion in compelling compliance with the plain and simple terms of the agreement as set forth on the record. *Id.* at 351.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Donald E. Holbrook, Jr.
/s/ Martin M. Doctoroff